

<p>CITY OF SAN JOSÉ, CALIFORNIA Department of Planning, Building and Code Enforcement 801 North First Street, Room 400 San José, California 95110-1795</p> <p>STAFF REPORT</p>	Hearing Date/Agenda Number 3/10/04/Item #: 3.f.
	File Number TR03-086
	Application Type Appeal of the denial of a Tree Removal Permit
	Council District 6
	Planning Area Willow Glen
	Assessor's Parcel Number(s) 282-14-121
PROJECT DESCRIPTION Completed by: Erin Morris	
Location: 2502 Tolworth Drive	
Gross Acreage: 0.15	Net Acreage: 0.15 Net Density: n/a
Existing Zoning: R-1-8(PD)	Existing Use: Single family residence
Proposed Zoning: No change	Proposed Use: No change
GENERAL PLAN Completed by: ELM	
Land Use/Transportation Diagram Designation Medium Low Density Residential (8 DU/AC)	Project Conformance: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> See Analysis and Recommendations
SURROUNDING LAND USES AND ZONING Completed by: ELM	
North: Single family residences	R-1-8 Residence District
East: Single family residences	R-1-8(PD) Residence District
South: Single family residences	R-1-8(PD) Residence District
West: Single family residences	R-1-8 Residence District
ENVIRONMENTAL STATUS Completed by: ELM	
<input type="checkbox"/> Environmental Impact Report found complete <input type="checkbox"/> Negative Declaration circulated on <input type="checkbox"/> Negative Declaration adopted on	<input checked="" type="checkbox"/> Exempt <input type="checkbox"/> Environmental Review Incomplete
FILE HISTORY Completed by: ELM	
Annexation Title: Maywood No. 20	Date: 8/15/63

PUBLIC AGENCY COMMENTS RECEIVED

Completed by: ELM

Department of Public Works

None received.

Other Departments and Agencies

See electronic communication from Russell Hansen of the Department of Transportation, dated February 9, 2004.

GENERAL CORRESPONDENCE

See attached Notice of Permit Appeal filed by Robert W. Clough on December 22, 2003 and attached letter and petition.

ANALYSIS AND RECOMMENDATIONS

BACKGROUND

This is an appeal of the Planning Director's decision to deny a Tree Removal Permit (File No. TR03-086) to allow removal of one Deodar Cedar tree (81 inches in circumference). The Tree Removal Permit was heard at the December 10, 2003 Director's Hearing and denied by the Planning Director on December 12, 2003.

The tree is located in the side yard of a single-family residence, just over 6 feet from the rear yard fence and approximately 15 feet from the curb of Spruance Street. In addition to the subject tree, the site includes four fruit trees, a Raywood Ash, a smaller deodar cedar and an ordinance-size Locust tree. The site and surrounding properties are zoned R-1-8(PD) Residence District. The site is surrounded by single-family residential uses.

On December 22, 2003, Robert Clough, who owns property adjacent to the project site, filed a Notice of Appeal of the Director's decision to deny the subject Tree Removal Permit (see attached notice and letter). A response to Mr. Clough's appeal is provided in the *Analysis* section below.

ENVIRONMENTAL REVIEW

This project has been determined to be exempt from environmental review under Section 15304 of the

tree, all reasonable measures which can effectively preserve the tree should be pursued.” (See analysis below).

COMMUNITY OUTREACH

Public hearing notices for the proposed Tree Removal Permit and the subsequent appeal were mailed to all property owners and tenants within 300 feet of the subject site. The subject Tree Removal Permit was considered at a public Director’s Hearing conducted on December 10, 2003. Staff has been available to discuss the project with interested members of the public.

ANALYSIS

The Appeal

The appeal was filed by the adjoining property owner, who supports removal of the tree and raises numerous concerns regarding the tree (see attached Notice of Appeal). The appellant’s concerns focus on the fact that the tree overhangs his side garden dropping needles and seed cones, which he indicates stain cars parked in the driveway, prevent his granddaughter from playing in the back yard, cause problems with his dogs’ feet, and require constant clean-up. Furthermore, the appellant indicates that the tree’s droppings and shade inhibit the growth of plants and trees in its vicinity, and that the tree may be a source of rodents. The appellant points out that the tree is one of five large trees in front of the property and its removal would not diminish the attractiveness of the area.

Tree Removal Findings

Title 13 of the San Jose Municipal Code specifies that in order to grant a Tree Removal Permit, the Director (or the Commission on appeal) must make one or more of the following findings:

1. That the location of the tree with respect to a proposed improvement unreasonably restricts the economic development of the parcel in question; or
2. That the condition of the tree with respect to disease, danger of falling, proximity to an existing or proposed structure, and/or interference with utility services, is such that preservation of the public health or safety requires its removal; or
3. That the tree affected is of a size, type and condition, and is in such a location in such surroundings, that its removal would not significantly frustrate the purposes of this chapter as set forth in Section 13.32.010.

other evidence relative to these findings. The City Arborist examined the tree, at the request of Planning Staff, and concluded that the tree appears to be in good health (see attached e-mail).

The analysis of whether removal of the subject tree would significantly frustrate the purposes of the Tree Removal Ordinance, the third possible finding, requires a closer look at the location and surroundings of the tree. The tree is located approximately six feet from the appellant's property line and overhangs his side yard and driveway. Although most of the problems the tree is causing on the appellant's property can be resolved through reasonable maintenance measures and appropriate landscaping in the vicinity of the tree, protection from damage to the paint of cars parked in the driveway is more difficult. The appellant has indicated that even the use of a car cover has not resolved this problem. While the General Plan specifies that all "reasonable" measures to preserve a mature tree should be pursued, staff believes that the location of this tree overhanging the neighbor's driveway creates problems that cannot be resolved through reasonable measures. Expecting the appellant to cease use of his driveway or to endure damage to his vehicles is not reasonable. Furthermore, staff believes that the number of trees proposed to remain on the property, including large shade trees, supports the finding that the removal of one tree will not frustrate the purposes of the Ordinance. Removal of the subject tree will not eliminate the benefits that the group of existing trees provide on this tree-rich site.

Conclusion

Based on the above analysis, staff concludes that removal of the tree will not frustrate the purposes of the Tree Removal Ordinance in that the position of the tree relative to the neighbor's driveway is causing damage and that the substantial number of trees proposed to remain will preserve the benefits of the urban forest on this site.

RECOMMENDATION

Planning staff recommends that the Planning Commission reverse the Director's decision and uphold the appeal to approve the proposed Tree Removal Permit and include the following facts and findings in its Resolution.

The Planning Commission finds that the following are the relevant facts regarding the proposed project.

1. This site has a designation of Medium Low Density Residential (8 DU/AC) on the adopted San José 2020 General Plan Land Use/Transportation Diagram.
2. The project site and surrounding properties are in the R-1-8 and R-1-8(PD) Residence Zoning District.

trees provide to the City, including that trees enhance the scenic beauty of the city, increase property values, contribute to energy efficiency and the reduction of urban temperatures, serve as windbreaks and produce oxygen and purify the air.

7. No new development or improvements are proposed in the area of the tree. The tree is in good health, does not appear to be in danger of falling and is not interfering with utility services or existing structures. No arborist report or other evidence relative to the health or safety of the tree has been submitted. The City Arborist examined the tree and concluded that the tree is in good health.
8. The tree is located approximately six feet from the neighbor's property line and overhangs his side yard and driveway. Falling debris from the tree has damaged the paint of cars parked in the driveway. The use of a car cover has not resolved this problem. The location of this tree overhanging the neighbor's driveway has resulted in damage that cannot be prevented short of ceasing use of the driveway.
9. A total of 7 trees are proposed to remain on the property, including several large shade trees. Removal of the subject tree will clearly not eliminate the benefits that trees provide on this tree-rich site.

This Planning Commission concludes and finds, based upon an analysis of the above facts that:

1. That the tree affected is of a size, type and condition, and is in such a location in such surroundings, that its removal would not significantly frustrate the purposes of this chapter as set forth in Section 13.32.010.
2. The project is consistent with the site's designation of Medium Low Density Residential (8 DU/AC) on the San Jose 2020 General Plan Land Use/Transportation Diagram. The proposed tree removal is consistent with Forest Policy No. 3, which states: "The City encourages the maintenance of mature trees on public and private property as an integral part of the urban forest. Prior to allowing the removal of any mature tree, all reasonable measures which can effectively preserve the tree should be pursued."
3. The proposed project is in conformance with the requirements of the California Environmental Quality Act.

Attachments:

Location map

Notice of Appeal